

Appl. No. 09/911,868  
Amdt. dated October 5, 2006  
Reply to Office Action of April 7, 2006

PATENT

**Amendments to the Drawings:**

The accompanying sheet of formal drawings, labeled "Replacement Sheet", replaces Figs. 1-2 of Applicants' original sheet.

**REMARKS**

Claims 2-20, 24-42, 46-63 and 87-105 remain in this case for consideration. Claims 2, 6-8, 13, 24, 28-30, 35, 46, 50-52, 56, 87 and 91-94 have been amended to better define Applicants' invention. Support for Applicants' claim amendments can be found, among other places, in paragraphs 10-11 and 30-32 of Applicants' patent application.

A. Interview Summary

Applicants would first like to thank Examiner Ly for taking the time to speak over the telephone with Applicants' attorneys on September 6, 2006 about how Applicants' invention differs from the cited art. Most of the discussion involved Sainton's U.S. Patent No. 5,854,985. Applicants' attorney explained how, unlike Applicants' invention, the Sainton patent involves a non-binding estimate of likely charges from several different networks which the user can then evaluate to choose a preferred network. Applicant's attorney used the analogy of getting multiple estimates from plumbers of the anticipated cost to fix a plumbing leak. If the plumber who is hired finds out that the work is much more complicated than expected, the final plumbing bill might be much higher than estimated. By contrast, the charge calculated in Applicants' wireless device is the final charge used to deduct funds (e.g., prepaid or credit limit) from a user account. Applicants' attorneys and Examiner Ly then discussed the type of claim amendments that Applicants have now presented as a way to clearly distinguish Applicants' invention from Sainton. At the conclusion of the interview, Examiner Ly indicated that if Applicants made these types of claim amendments, they would be able to overcome Sainton.

B. Formal Matters

Applicants' informal drawings have been objected to as being of insufficient quality to permit examination. To overcome this basis of objection, Applicants are submitting a replacement sheet of formal drawings for Figures 1 and 2.

Applicants' claims 2-20, 24-42, 46-63 and 87-105 have been rejected on the ground of nonstatutory obviousness-type double patenting over Applicants' earlier U.S. Patent

No. 6,725,031. The Examiner has indicated that a timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome this obviousness-type double patenting rejection. While Applicants do not agree that the present claims are obvious in view of the issued claims in Applicants' earlier U.S. Patent No. 6,725,031, Applicants are nonetheless submitting a terminal disclaimer with this Amendment to moot the obviousness-type double patenting rejection.

Claims 2, 6-8, 24, 28-30, 46, 50-52, 87 and 91-93 have been rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. More specifically, the Examiner objects to adding the word "actual" before "charge" in claims 2, 24, 46 and 87 to form the claim element "actual charge." Moreover, the Examiner objects to adding the word "balance" after "account" in claims 6-8, 28-30, 50-52 and 91-93 to form the claim element "account balance." While the expressions "actual charge" and "account balance" may not appear verbatim in Applicants' specification, Applicants submits that there is written description support for the claim elements. For example, in paragraph 30 on page 8 of Applicants' specification, it describes having the data rating application pass "the calculated charge" to a billing application in real time to "debit the internal prepaid account." Applicants submit that this disclosure demonstrates calculation of an actual charge by the data rating application which is then used to debit an internal prepaid account balance. Nonetheless, to avoid a debate about the meaning of the words "actual" and "balance", Applicants have amended claims 2, 6-8, 24, 28-30, 46, 50-52, 87 and 91-93 to remove the words "actual" and "balance" from Applicants' claims and, instead, now use different words to convey the distinguishing aspects of Applicants' invention.

C. Prior Art Rejections

1. The Invention

Applicants have invented a data rating software application programmed into a wireless device to determine charges assessed for wireless data communications so that those charges can then be deducted from an account related to the wireless device. Unlike existing systems which calculate wireless communication charges by selecting, usually at the network

server, a rate based upon distance or time-of-day and then multiplying that rate by the duration of the phone call, Applicants' data rating software application allows the wireless device itself to select one or more rates and one or more units of measure applicable to the data communication session as determined by type of data, the usage of the data, the source of the data, the service level selected, the service level achieved and/or the connection method. The rate is a quantity of money per unit of measure and the units of measure include the quantity of bytes, quantity of data packets and/or the connection involved in the communication. After a charge is determined by multiplying a rate by a unit of measure, the charge is deducted from an account (e.g., prepaid or credit limit) related to the wireless device. In some embodiments, the selection of rates and units of measure is triggered by the data rating application detecting an event which takes place during the course of setting up the data communication session (e.g., a detected connection between the wireless device and the network).

2. The Cited Art Distinguished

Claims 2-7, 9-20, 24-29, 31-42, 46-51, 53-63, 87-92 and 94-105 have been rejected under 35 U.S.C. § 102(b) as being anticipated by Sainton's U.S. Patent No. 5,854,985 ("Sainton patent"). Claims 8, 30, 52 and 93 have been rejected under 35 U.S.C. § 103(a) as being obvious over the Sainton patent in view of Applicants' so-called "admitted prior art."

The Sainton patent discloses an omni-modal radio apparatus which allows the user to collect rating and performance information from various networks and then, based upon user defined criteria, use the collected information to choose the most favored network through which to transmit communications. The user defined criteria can include: (1) the cost of sending a data message, (2) the quality of transmission link, (3) the potential for being bumped off of the system, (4) the security of transmission, and (5) any special criteria which the user could variably program into the omni-modal radio apparatus. With respect to data transmission, Sainton's omni-modal radio apparatus can look at the type and quantity of the data to be transmitted in order to "predict" what the "expected cost" of data transmission will be. (See, Sainton patent, col. 17, lns. 6-15). While Sainton provides the user with flexibility to choose a favored network for

transmitting information, Applicants find no disclosure in the Sainton patent of such flexibility for receiving information.

In Applicants' invention, a data rating software application is programmed into the wireless device to calculate the charges for a data communication which are then deducted from an account related to the wireless device. Applicants' data rating software calculates these charges by multiplying a rate by a unit of measure. Both the rate and unit of measure are determined by type of data, the usage of the data, the source of the data, the service level selected, the service level achieved and/or the connection method. The rate is a quantity of money per unit of measure and the units of measure include the quantity of bytes, quantity of data packets and/or the connection involved in the communication.

The calculation of deductible charges within the wireless device using Applicant's data rating software application is an important advantage of Applicants' invention over existing network centric billing systems. As explained in paragraphs 6 through 9 of Applicants' specification, monitoring and keeping track of data packets accurately for billing purposes at the network level is not a simple task. When data packets are sent to a destination, they are usually routed via several nodes and networks before they reach their final destination. Traversing several networks presents a problem from a monitoring and billing perspective because different networks often handle and bill data packets differently. The problem of accounting for data transmission is further complicated when the network(s) needs to resend some packets, possibly through alternative routes. As such, a complicated arrangement of servers and protocols is needed to coordinate billing information between networks, and among nodes within the same network, for the typical data communication.

By contrast, in Applicants' system, all the charges for data billing are calculated in the wireless device by the data rating software application and, as such, reside in the wireless device itself. In Applicants' system, there is no need for network servers to coordinate among themselves to determine the charge for a data transmission. A robust data rating algorithm is built into the wireless device which does all the necessary calculation for both outgoing and incoming data communications. As such, Applicant's decentralized approach (i.e., within the

wireless device) to data billing removes a great deal of the burden borne by network servers under the common centralized approach to data billing.

In the Sainton patent, there is no disclosure of calculating data transmission charges within the wireless device which are then used to deduct from an account related to the wireless device. In fact, the Sainton patent teaches just the opposite when it says that an "expected cost" can be "predicted" from Sainton's software. (See, Sainton patent, col. 17, lns. 6-15). Plainly, Sainton envisions working within the standard network system of having the costs calculated at the network switch by the various network servers coordinating their billing information. The portion of the Sainton specification cited by the Examiner to allege that "Sainton further teaches the data rating application is configured to update an account balance relating to the wireless device", specifically column 18, lines 19-30 of the Sainton patent, teaches nothing of the sort. All that is disclosed in column 18, lines 19-30 of the Sainton patent is that network rating and performance information can be stored in the radio apparatus by the user for future reference.

In addition to missing disclosure of charges being calculated by the wireless device for use in deducting from an account related to the wireless device, the Sainton patent also fails to disclose other features of Applicants' invention. For example, because Sainton is focused on selecting a network for outgoing communications, Applicants find no disclosure in the Sainton patent of using the "source of data" and "usage of data" as criteria for data rating as referenced in all of Applicants' claims. Moreover, Applicants find no disclosure in the Sainton patent of using charges calculated by the data rating application to "deduct from a prepaid account" as set forth in Applicants' claims 6-8, 28-30, 50-52 and 91-93. Further, Applicants find no disclosure in the Sainton patent of detecting beginning and ending events to calculate charges as set forth in Applicants' claims 9-11, 31-33, 53-55 and 94-96. For these reasons, the Sainton patent, either alone or in combination with so-called "admitted prior art", would not render any of Applicants' pending claims unpatentable.

**CONCLUSION**

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance and an action to that end is respectfully requested. If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at (415) 576-0200.

Respectfully submitted,



Guy W. Chambers  
Reg. No. 30,617

TOWNSEND and TOWNSEND and CREW LLP  
Two Embarcadero Center, Eighth Floor  
San Francisco, California 94111-3834  
Tel: 415-576-0200  
Fax: 415-576-0300  
Attachments  
GWC:bjd  
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